

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

DR. ROBERT LEDERER,
Plaintiff

VS.

JOHN SNOW, INC. AND THE
JOHN HOPKINS UNIVERSITY/
CENTER FOR COMMUNICATION
PROGRAM,
Defendants

CIVIL ACTION NO.:
04-CV-10284-NG

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOHN HOPKINS
UNIVERSITY/CENTER FOR COMMUNICATION PROGRAM AND JOHN SNOW, INC.
MOTIONS FOR SUMMARY JUDGMENT**

Now comes the Plaintiff, Dr. Robert Lederer, who respectfully submits following as his Opposition to Defendants' John Hopkins University/Center Communication Program and John Snow, Inc.'s Motions for Summary Judgment & request that this Honorable Court deny Defendants' Motions for Summary Judgment.

INTRODUCTION

The basis of Plaintiff's claims against Defendants John Hopk University/Center for Communication Program (hereinafter "John Hopkins") and John Snow, Inc. (hereinafter "John Snow") is simply Defendants' failure to follow through with their agreement and contractual obligations. Both Defendants base their Motions for Summary Judgment on the parol evidence rule, which would prohibit the introduction of any evidence beyond the written Agreement. However, since the facts and circumstances surrounding the signing of the document are in question, this dispute is not subject to the parol evidence rule. Furthermore, as set forth below, Plaintiff claims that the written Agreement in question is a partially integrated agreement and may

supplemented by evidence of consistent additional terms. In other words, Agreement dated November 27, 2000, attached hereto as Exhibit A, did not contain of the terms of the Agreement between the Parties.

Therefore, Summary Judgment in favor of the Defendants is inappropriate a matter of law.

Because of the fact that both Defendants rely essentially on the parol evidence rule as the basis of their respective Motions, Plaintiff has included both Defendants within this Opposition.

FACTS

Defendants, John Snow, Inc. (hereinafter "JSI") and John Hopkins University/Center for Communication Program (hereinafter "John Hopkins") provide research and consulting services in the health care and service sectors. JSI conducts projects in many countries throughout the world.

At all times pertinent hereto, JSI was involved with a project entitled, "Romania Family Health Initiative", whose objectives were to increase access and use of reproductive health services and to develop and improve the availability of services at the community level in Romania.

The Romania Family Health Initiative was a US AID – FUNDED PROGRAM in conjunction with Defendant John Hopkins.

In or about May, 1999, Plaintiff received a letter from Mr. Eric Rebbert, Human Resources Manager for Defendant John Hopkins, requesting that Plaintiff submit curriculum vitae concerning his involvement with the Romanian project. See Affidavit of Dr. Robert Lederer, attached hereto as Exhibit A and incorporated herein by reference.

In or about September, 2000, Plaintiff was again contacted by an employee of Defendant John Hopkins, Laurie Liskin, concerning said health care project already in progress in Romania. Ms. Liskin informed Plaintiff that they would require an obligation from him of approximately one year. Plaintiff informed Ms. Liskin that he was interested in serving on the Team in Romania. Lederer Affidavit, ¶12.

On October 2, 2000, Plaintiff was informed by Mr. Rebbert that both Defendants John Hopkins and JSI were interested in opening discussions with him relating to

involvement in the Romanian project. Soon thereafter, Plaintiff was informed that the US Mission in Bucharest, was extremely pleased with Plaintiff's experience and credentials and would proceed with negotiations and an interview for the position. Lederer Affidavit, ¶3.

Subsequently, in October, 2000, Plaintiff met with John Hopkins and JSI in Baltimore, Maryland. Negotiations between the parties resulted in an Agreement that was agreed that Plaintiff would initially go to Romania until the Christmas holidays, then return to the United States to gather his personal belongings, including his dog, and return to Bucharest in early January for the duration of the project, i.e. October, 2000. Lederer Affidavit, ¶4.

Thereafter, Plaintiff made several inquiries concerning the status of his written contract. On each occasion, Plaintiff was informed that Defendants were working on the said contract, and that he would receive it shortly. Lederer Affidavit, ¶5.

By email dated November 29, 2000, Plaintiff was informed that Defendants were ready with his contract and that he should arrange his travel and logistics to Romania. (A copy of said email is attached as Exhibit B and incorporated herein by reference).

Furthermore, Plaintiff arranged for, and received several vaccinations in anticipation of his many months in Romania. He also made arrangements for his return to return with him to Romania. Lederer Affidavit, ¶9.

On December 1, 2000, the day before Plaintiff was leaving for Romania, Plaintiff received what appeared to be a letter agreement dated November 27, 2000, which covered the period in Romania from December 4, 2000 to December 17, 2000. Plaintiff was informed that he would receive a contract while in Romania, to cover his scope of work for year 2001. Furthermore, Dr. Lederer was instructed to meet with representatives of JSI and USAID to discuss his scope of work for 2001. Lederer Affidavit, ¶7. A true and correct copy of the November 27, 2000 letter agreement is attached hereto as Exhibit C and incorporated herein by reference.

Plaintiff left for Bucharest, Romania on or about December 4, 2000. Plaintiff completed the initial phase of the project and returned to the United States for the holidays on or about December 19, 2000. Lederer Affidavit, ¶11.

Despite various assurances, Plaintiff did not receive a copy of the contract during the remaining period of the project through October, 2001. Lederer Affidavit, ¶11.

Subsequently, Defendants failed and/or refused to allow Plaintiff to return to Romania and complete the project.

ARGUMENT

I. THE STANDARD FOR SUMMARY JUDGMENT

"Summary judgment is a 'device to make possible the prompt disposition of controversies on their merits without a trial if, in essence, there is no real dispute about the salient facts or if only a question of law is involved.'" *Cassesso v. Commissione f* *Correction*, 390 Mass. 419, 422 (1984) (quoting *Community National Bank v. Dav*, 369 Mass. 550, 553 (1976)). If questions of material fact remain, then summary judgment is inappropriate and must be denied.

If a motion for summary judgment is supported by pleadings, affidavits, depositions or other admissible materials, the opposing party must submit other admissible materials setting forth facts showing that there is a genuine issue for trial. See *Godbout v. Cousens*, 396 Mass. 254, 261-262 (1985); *Madsen v. Erwin*, 395 Mass. 715, 719 (1985). A motion for summary judgment that is unsupported, or is opposed with admissible materials showing that the movant is not entitled to summary judgment, must be denied. See *id.*

"Moreover, '[t]he evidence is 'considered with an indulgence in the [opposing party's] favor.' ' [citations omitted] " *Wilton Properties II, Inc. v. 99 West, Inc.*, 2000 WL 33170832 (pg. 2) (Mass. Super. 2000).

II. CONFLICT OF LAWS

Plaintiff is in agreement with Defendants that the Substantive Law of Massachusetts, Florida and Maryland are consistent with respect to issues relating to contract interpretation and parol evidence, and therefore no conflict of laws exist.

III. THE FACTS AND CIRCUMSTANCES SURROUNDING THE SIGNING OF THE CONTRACT REFLECT THE PARTIES' TRUE INTENTIONS AND THEREFORE, THE PAROL EVIDENCE RULE DOES NOT APPLY

A. The Agreement in Question is a Partially Integrated Agreement

The parol evidence rule is inapplicable to the facts of this case.

Prior to any consideration of the parol evidence rule, the Trial Judge must determine first whether the contract is a totally integrated agreement, or partially integrated. *Antonellis v. Northgate Construction Corp.*, 362 Mass. 847, 849, 362 N.E.2d 626, 627 (1973). A totally integrated agreement is most likely to exist when the contract in question contains a "merger clause", which essentially states that the writing is the entire agreement of the parties. See Restatement, 2d, Contracts, §209. The contract in question here has no such merger clause.

"In order to determine whether the oral agreement is to be given effect, the court must first determine" whether an agreement is "the entire agreement of the parties." *Alexander v. Snell*, 12 Mass. App. Ct. 323, 324 (1981). The question of whether or not a written agreement reflects the entire agreement is an issue of fact for the decision of the Trial Judge, entirely preliminary to any application of the parol evidence rule. *Id.* at 324. Therefore, evidence of negotiations, discussion and dealings are admissible in order to determine whether or not the written agreement reflects the entire agreement. *Id.* A judge may hear evidence beyond the writing for the purpose of discovering the intention of the parties and determining whether the formal contract contained the entire agreement of the parties. *Antonellis v. Northgate Construction Corp.*, 362 Mass. 847, 849 (1973).

As the evidence will demonstrate, there was clearly a great deal of discussion and negotiation above and beyond the written Agreement dated November 27, 2004. As set forth above, the evidence will clearly demonstrate that all discussions and negotiations between the parties leading up to the presentation of the Agreement to Dr. Lederer, focused on the fact that Dr. Lederer's involvement would extend until the completion of the project. Lederer Affidavit, ¶¶4. Any consideration of a short-term assignment was never discussed with Dr. Lederer. Lederer Affidavit, ¶¶8. Furthermore, Dr. Lederer's actions, including, but not limited to, receiving immunizations, mak-

arrangements with his bank and receiving clearance to return to Romania with his c
lends credence to Plaintiff's position of a long-term commitment.

The evidence also clearly indicates that leading up to the receipt of
Agreement by Dr. Lederer, Defendants were considering other candidates. In f
Plaintiff received the Agreement only a few days prior to his scheduled depart
Nevertheless, Dr. Lederer was expecting to receive a long-term Agreement while
was in Romania. Lederer Affidavit, ¶7.

The fact that the Agreement references that Dr. Lederer was to return
Romania following the holidays supports Plaintiff's argument that the writing wa
partially integrated Agreement. Specifically, one of the two scopes of work outline
the November 27, 2000 Agreement refers to Dr. Lederer's obligation to discuss
scope of work in Romania following the holidays. It states that Dr. Lederer will "2. M
with JSI and USAID Romania to discuss scope of work for year 2001."

As argued by the Defendants, the language in the Agreement concerning
Lederer's scope of work for 2001, is also unambiguous and unequivocal. The langu
contained in said document, clearly demonstrates the intention of the Defendants
have Dr. Lederer return to Romania following the holidays.

Quite simply, there is sufficient evidence to create, at the very least, a ques
of fact as to whether the Agreement dated November 27, 2000 contained the er
agreement of the parties. It is nonsensical that fifty-percent of Dr. Lederer's assignm
as outlined in the Agreement, would concern his scope of work for 2001, if Defenda
argument is to be accepted that the Agreement between the parties, was nothing m
than a two-week assignment.

Furthermore, as argued by the Defendants, Plaintiff is not attempting to vary
contradict the terms of the November 27, 2000 Agreement. Rather, as set forth abo
Plaintiff argues that the November 27, 2000 Agreement is a partially integra
agreement, or one which does not state all of the terms agreed upon. Therefore,
Court can consider other facts and circumstances surrounding the signing of s
document. *Antonellis v. Northgate Construction Corp.*, 362 Mass at 849.

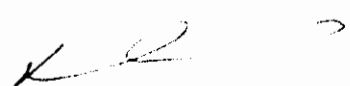
Furthermore, significant pressure was placed upon Dr. Lederer to induce him to sign the initial agreement reflecting the shorter time frame in Romania. Dr. Lederer was informed that the contract was needed back immediately or else he would not be allowed to leave for Romania. Lederer Affidavit, ¶7. These facts and circumstances surrounding the execution of the document are important facts at issue.

The parol evidence rule does not bar the showing of facts and circumstances surrounding the signing of the document. *Robert Industries, Inc. v. Spence*, 362 Mass. 751, 753 (1973).

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully requests that this Court deny Defendants' Motion for Summary Judgment.

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By His Attorneys,
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Dated: September 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail/by hand.

Dated: 9/23/05 